

Approved For Release 2008/08/28 : CIA-RDP86B00338R000300420002-3

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

15 February 1984

NOTE FOR: Director of Legislative Liaison

FROM:



Associate General Counsel

STAT

SUBJECT: Agency Indemnification Program

I am forwarding this to you for  
such action as you deem appropriate.  
Of course, we are willing to provide  
such assistance to you as you may require.

STAT



Attachment

/A Registry

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Indemnification of Agency Employees

84-0691

FROM:

Stanley Sporkin  
General Counsel

EXTENSION

NO.

DATE

7 February 1984

STAT

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDA  
7D24 HQS

8 FEB 1984

Although this had already been approved, when I reviewed it a second time I thought that a couple of minor changes were advisable and these are incorporated in the revised draft

STAT

3. Acting DCI

0 8 FEB 1984

I also want you to consider whether you believe it necessary to show this to our oversight committees prior to promulgation.

5. DDA  
EO/DOA

9 FEB 1984

9 FEB 1984

R

Stanley Sporkin

7. General Counsel

Attachment

STAT

REVISED DRAFT

APPROVE ☒ DISAPPROVE ☐

SHOWING OVERSIGHT COMMITTEES

APPROVE ☒ DISAPPROVE ☐

7: A copy of the attached has been sent to C/RCD/OIS for incorporation into

STAT

STAT

EO/DOA

FORM  
1-79610 USE PREVIOUS  
EDITIONSDCI  
EXEC  
REG

MANAGEMENT

STAT

## d. Agency Indemnification

(1) Any person described in subparagraph (2) who, as a result of activities carried out within the scope of his employment, is sued, subpoenaed, or investigated in his individual capacity, or is subjected to investigatory, administrative, professional or state proceedings of any nature, is entitled to be indemnified under section 8 of the Central Intelligence Agency Act of 1949, as amended, for the costs of legal representation by private counsel and for the amount of any judgment or fine entered against him if the General Counsel, in his sole and unreviewable discretion, determines that the person appears to have been acting in good faith and within the scope of his employment, that such indemnification would be in the interests of the Agency, and under all of the circumstances, taking into account the legal expenses and the amount of any judgment or fine, the indemnification would be fair and reasonable. Any decision regarding indemnification of the General Counsel shall be made by the Director of Central Intelligence in his sole and unreviewable discretion.

(2) This paragraph applies to all Agency officers and employees and to any independent contractor with the Agency whose contract contains an indemnification provision.

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Symbol, room number, Agency/Post)		Initials	Date
1.			
2.			
3.			
4.			
5.			

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS RE: DDA 84-0352

Stan,

We love you and  
for this big morale booster.  
Thanks Much!

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA  
FPMR (41 CFR) 101-11.206

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MANAGEMENT

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d. Agency Indemnification

(1) Any person described in subparagraph (2) who, as a result of his official responsibilities, is sued, subpoenaed, or investigated in his individual capacity, or is subjected to congressional proceedings or state criminal proceedings, is entitled to be indemnified under section 8 of the Central Intelligence Agency Act of 1949, as amended, for the reasonable costs of legal representation by private counsel and for the amount of any judgment or fine entered against him if the General Counsel, in his sole and unreviewable discretion, determines that the person appears to have been acting in good faith and within the scope of his employment, that such indemnification would be in the interests of the Agency, and under all of the circumstances, the indemnification would be fair and reasonable. Any decision regarding indemnification of the General Counsel shall be made by the Director of Central Intelligence in his sole and unreviewable discretion.

(2) This paragraph applies to all Agency officers and employees and to any independent contractor with the Agency whose contract contains an indemnification provision.



84-202

## Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

13 JAN 1984

Mr. Stanley Sporkin  
General Counsel  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Mr. <sup>Stam</sup>Sporkin:

Members of your staff have advised Civil Division attorneys that your office is considering a regulation which would permit the Central Intelligence Agency to indemnify present and former CIA employees for legal expenses, fines and judgments incurred in civil, criminal or congressional matters arising from actions taken within the scope of employment. It is understood that the authority for the proposed regulation would be Section 8 of the Central Intelligence Agency Act of 1949, as amended.

We take no position on the underlying authority, although it does not appear that such indemnification is either explicitly or implicitly authorized by the statute. Our concern is with the indemnification provision as a matter of policy. As you know, this Administration has worked since its inception toward securing congressional reform of the Federal Tort Claims Act in order to deal with the serious problem of suits against individual federal officials. The progress of this legislative effort has been difficult but there is reason for hope that favorable consideration will be given to a proposal which would eliminate Bivens suits against all federal employees. At this writing, negotiations are at an extremely precarious stage and a unified front is essential if we are to succeed.

From time to time, various agencies, impatient with the progress of the comprehensive legislative effort, have considered particularized proposals which would provide relief for their own employees. We have always opposed such piecemeal approaches on the grounds that it would create a patchwork of inconsistent remedies and protections resulting in confusion, legal inefficiency and inequity. Further, momentum for general reform would be weakened.

-2-

Regardless of whether there is a proper statutory basis, it is our view that strong policy reasons dictate that no further action be taken on the proposed indemnification regulation until it is determined whether or not the Administration's legislative effort will bear fruit.

As always, we welcome your assistance and cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard".

RICHARD K. WILLARD  
Acting Assistant Attorney General

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

General Counsel

22 February 1984

Richard K. Willard, Esquire  
Acting Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Richard:

I have discussed your letter of 13 January 1984 with the Director of Central Intelligence (DCI) and we both fully appreciate the desirability of amending the Federal Tort Claims Act (FTCA) so that the United States will be substituted for individual defendants sued in their personal capacity for acts undertaken in the scope of their Government employment. We are aware that negotiations with Congress have been going on for years and we continue to support your efforts to obtain Government-wide relief in this area.

However, we are not confident that the FTCA amendments will be passed anytime in the foreseeable future. Thus, as an interim measure, we are promulgating an Agency regulation which establishes an indemnification program for Agency personnel. To the extent that our regulation is rendered unnecessary by passage of the FTCA amendments in the future, we will be happy to rescind or modify it at that time. But absent the enactment of Government-wide relief, we believe that the Agency must take whatever action is necessary to protect its personnel and to ensure that its mission will not be impaired.

We believe that responsible officials who must make the most sensitive decisions affecting the national security cannot be placed in an environment where they constantly have to be concerned about their personal and financial well-being. We would be remiss in our responsibilities if we did not take all necessary action within the mandate of the Agency's charter to prevent this eventuality from occurring.

Congress has recognized the special and sensitive nature of the Agency's mission and has provided the DCI with the broad authorities necessary to carry out that mission. We believe that the various unfounded suits that have been filed against our key officials adversely impact upon the ability of the Agency to fulfill its mission and constitute an occupational hazard which the DCI has been given the power to ameliorate. This has become even more urgent because of our new arrangement with GSA which will increase our protection responsibilities with respect to CIA facilities.

Please understand that our decision to proceed with an indemnification program for Agency personnel should in no way be interpreted as indicating a lack of support by the Agency for Government-wide relief and we will provide you with whatever assistance we can in that effort. We think that contrary to impeding the Government's effort to obtain broad relief, our program will further show that agencies regard the prospect of personal liability to be a very real and substantial threat.

Sincerely,



(J) Stanley Sporkin

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